

ESTTA Tracking number: **ESTTA232630**

Filing date: **08/25/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185243
Party	Defendant The Coca-Cola Company
Correspondence Address	DOLORES A. MORO THE COCA-COLA COMPANY 1 COCA COLA PLZ NW ATLANTA, GA 30313-2499 UNITED STATES damoro@na.ko.com
Submission	Answer
Filer's Name	Bruce W. Baber
Filer's e-mail	BBaber@kslaw.com, PGuibault@na.ko.com, EBrown@kslaw.com
Signature	/Bruce W. Baber/
Date	08/25/2008
Attachments	Answer SPRITE QUENCH Opposition.pdf ( 10 pages )(29256 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

QUENCH CO., LLC,	)	
	)	
Opposer,	)	OPPOSITION
	)	
v.	)	NO. 91185243
	)	
THE COCA-COLA COMPANY,	)	
	)	
Applicant.	)	

ANSWER OF APPLICANT THE COCA-COLA COMPANY

NOW COMES THE COCA-COLA COMPANY ("TCCC"), Applicant in the above-captioned matter, and, by and through its undersigned counsel and in accordance with Rules 2.106 and 2.116 of the Trademark Rules of Practice, serves and files this answer to the Notice Of Opposition (the "Opposition") filed herein by opposer Quench Co., LLC ("Opposer") on July 15, 2008. TCCC notes that TCCC was named incorrectly in the caption and in paragraph 13 of the Opposition as "The Coca Cola Company" and "Coca-Cola Company," and states that its correct name is "The Coca-Cola Company."

TCCC responds as follows to the allegations of the Opposition:

In response to the first, unnumbered paragraph of the Opposition, TCCC admits that TCCC is the applicant in and owner of application serial number 78-449,413 for the mark SPRITE QUENCH (the "Application"); denies that Opposer will be damaged by registration of TCCC's mark SPRITE QUENCH; denies that Opposer has any valid basis for opposing the registration of TCCC's SPRITE QUENCH mark; and states that it

is without knowledge of information sufficient to form a belief as to the truth of the remaining allegations of the first unnumbered paragraph.

TCCC responds as follows to the separately numbered paragraphs of the Opposition:

1. In response to the allegations of paragraph 1 of the Opposition, TCCC admits that the online records of the U.S. Patent and Trademark Office reflect that registration number 555,788 (the “788 Class 32 Registration”) was issued on March 11, 1952 for a mark consisting of the word “Quench” in a stylized form together with design elements for “carbonated citrus-flavored soft drink and the concentrate from which the same is made” in International Class 32 and that the 788 Class 32 Registration has been renewed; states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 regarding Opposer’s ownership of the 788 Class 32 Registration or as to the validity of any transfers of ownership or renewals of the 788 Class 32 Registration; and denies the remaining allegations of paragraph 1.

2. In response to the allegations of paragraph 1 of the Opposition, TCCC admits that the online records of the U.S. Patent and Trademark Office reflect that registration number 555,789 (the “789 Registration”) was issued on March 11, 1952 for the mark QUENCH in a stylized form for “carbonated citrus-flavored soft drink and the concentrate from which the same is made” in International Class 32 and that the 789 Registration has been renewed; states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 regarding

Opposer's ownership of the 789 Registration or as to the validity of any transfers of ownership or renewals of the 789 Registration; and denies the remaining allegations of paragraph 2.

3. In response to the allegations of paragraph 3 of the Opposition, TCCC admits that the online records of the U.S. Patent and Trademark Office reflect that registration number 746,274 (the "274 Registration") was issued on March 5, 1963 for a mark consisting of the word "Quench" in a stylized form together with design elements for "grapefruit and lemon flavored soft drinks and concentrates for making the same" in International Class 32 and that the 274 Registration has been renewed; states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 regarding Opposer's ownership of the 274 Registration or as to the validity of any transfers of ownership or renewals of the 274 Registration; and denies the remaining allegations of paragraph 3.

4. In response to the allegations of paragraph 4 of the Opposition, TCCC admits that the online records of the U.S. Patent and Trademark Office reflect that registration number 1,741,580 (the "580 Registration") was issued on December 22, 1992 for the mark DIET QUENCH for "soft drinks" in International Class 32 and that the 580 Registration has been renewed; states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 regarding Opposer's ownership of the 580 Registration or as to the validity of any transfers of ownership or renewals of the 580 Registration; and denies the remaining allegations of paragraph 4.

5. In response to the allegations of paragraph 5 of the Opposition, TCCC admits that the online records of the U.S. Patent and Trademark Office reflect that registration number 1,745,989 (the “989 Registration”) was issued on January 12, 1993 for a mark consisting of the words “diet Quench” in a stylized form together with design elements for “soft drinks” in International Class 32 and that the 989 Registration has been renewed; states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 regarding Opposer’s ownership of the 989 Registration or as to the validity of any transfers of ownership or renewals of the 989 Registration; and denies the remaining allegations of paragraph 5.

6. In response to the allegations of paragraph 6 of the Opposition, TCCC admits that the online records of the U.S. Patent and Trademark Office reflect that registration number 1,064,231 (the “231 Registration”) was issued on April 26, 1977 for the mark QUENCH for “salivary stimulant - namely, a lemon flavored liquid concentrate” in International Class 3 and that the 231 Registration has been renewed; states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 regarding Opposer’s ownership of the 231 Registration or as to the validity of any transfers of ownership or renewals of the 231 Registration; and denies the remaining allegations of paragraph 6.

7. In response to the allegations of paragraph 7 of the Opposition, TCCC admits that the online records of the U.S. Patent and Trademark Office reflect that registration number 1,047,788 (the “788 Class 3 Registration”) was issued on September 7, 1976 for the mark QUENCH for “chewing gum” in International Class 30

and that the 788 Class 3 Registration has been renewed; states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 regarding Opposer's ownership of the 788 Class 30 Registration or as to the validity of any transfers of ownership or renewals of the 788 Class 30 Registration; and denies the remaining allegations of paragraph 7.

8. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Opposition.

9. In response to the allegations of paragraph 9 of the Opposition, TCCC denies that Opposer or its predecessors have or have had a " 'Quench' family of trademarks"; denies that chewing gum and "salivary stimulants" are "related items" to soft drinks; and states that it is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 9.

10. In response to the allegations of paragraph 10 of the Opposition, TCCC denies that Opposer or its predecessors have or have had any marks containing, comprising or consisting of the word "quench" that qualify as famous marks, and states that it is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 10.

11. In response to the allegations of paragraph 11, TCCC denies that Opposer or its predecessors have never abandoned or evidenced any intent to abandon marks for soft drinks that contain, comprise or consist of the word "quench," and states

that it is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 11.

12. TCCC is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Opposition.

13. In response to the allegations of paragraph 13 of the Opposition, TCCC admits that the Application states that TCCC intends to use the mark SPRITE QUENCH for soft drinks, sports drinks, energy drinks and other goods in International Class 32; denies that TCCC's soft drink products compete directly with any products on or in connection with which Opposer or any related company to Opposer use any mark that contains, comprises or consists of the word "quench"; states that it is without knowledge or information sufficient to form a belief as to the allegations of paragraph 13 relating to the use by Opposer or its predecessors of any mark that contains, comprises or consists of the word "quench"; and denies the remaining allegations of paragraph 13.

14. In response to the allegations of paragraph 14 of the Opposition, TCCC denies that Opposer or its predecessors have or have had any "family of 'Quench' and 'Diet Quench' marks," and denies the remaining allegations of paragraph 14.

15. In response to the allegations of paragraph 15 of the Opposition, TCCC denies that there is any likelihood of confusion between any marks of Opposer and the mark SPRITE QUENCH, and denies the remaining allegations of paragraph 15.

16. In response to the allegations of paragraph 16, TCCC denies that Opposer or its predecessors have or have had any “ ‘Quench’ family of marks,” and denies the remaining allegations of paragraph 16.

#### FIRST DEFENSE

Opposer has not pleaded any law or facts that justify the rejection of the Application, Opposer’s Opposition to the Application, or a refusal to register Applicant’s mark SPRITE QUENCH.

#### SECOND DEFENSE

Upon information and belief, neither Opposer nor any company related to Opposer currently uses or has made significant commercial use in recent years of any mark that contains, comprises or consists of the word “quench” for soft drinks or other beverages or products in International Class 32, and any rights of Opposer to such marks have been abandoned and/or are limited in scope.

#### THIRD DEFENSE

The word “quench” is descriptive or highly suggestive as an element of a mark for beverages, is in use by a number of third parties, and is therefore relatively weak and dilute and entitled to a relatively narrow scope of protection.

#### FOURTH DEFENSE

The Trademark Trial and Appeal Board has considered the issues raised by Opposer as part an ex parte appeal by TCCC with respect to the Application and has determined, in its decision dated October 29, 2007, that there is no likelihood of



confusion between the mark SPRITE QUENCH and the marks shown in the 788 Class 32 Registration, the 789 Registration, the 272 Registration, the 989 Registration and/or the 580 Registration.

#### FIFTH DEFENSE

Use by TCCC of the mark SPRITE QUENCH for beverages is not likely to cause confusion, to cause mistake or to deceive.

TCCC denies each and every allegation of the Opposition not specifically admitted or otherwise responded to above. TCCC further denies that the Application should be rejected for any reason; denies that Opposer has asserted any valid basis for opposing registration by TCCC of the mark SPRITE QUENCH by TCCC; denies that the Opposition should be sustained; denies that Opposer will be damaged by the registration by TCCC of the mark SPRITE QUENCH; and denies that Opposer is entitled to any relief whatsoever against TCCC.

#### PRAYER FOR RELIEF

WHEREFORE, having fully answered the Opposition of Opposer Quench Co., LLC, applicant The Coca-Cola Company respectfully prays as follows:

- (1) that the Opposition of opposer Quench Co., LLC be dismissed with prejudice;
- (2) that judgment be entered in favor of applicant The Coca-Cola Company on the Opposition of Quench Co., LLC;

(3) that a Notice of Allowance be issued to TCCC for the mark  
SPRITE QUENCH; and

(4) that TCCC be granted such other and further relief as the  
Board deems just and proper.

This 25th day of August, 2008.

Respectfully submitted,

KING & SPALDING LLP

/s/ Bruce W. Baber /

---

Bruce W. Baber

BBaber@kslaw.com

Emily Bienko Brown

EBrown@kslaw.com

1180 Peachtree Street  
Atlanta, Georgia 30309  
Telephone: 404-572-4600  
Facsimile: 404-572-5134

Attorneys for Applicant  
THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Answer Of Applicant The Coca-Cola Company upon Opposer, by forwarding a copy thereof to Opposer's counsel of record by electronic mail addressed to counsel's e-mail address of record and by depositing a true and correct copy thereof in the United States Mail, postage prepaid, addressed to Opposer's counsel as follows:

Ms. Robin A. Schachter  
(schachter@ryanlaw.com)  
Ryan Swanson & Cleveland, PLLC  
1201 Third Avenue, Suite 3400  
Seattle, Washington 98101-3034

This 25th day of August, 2008.

/s/ Bruce W. Baber /

\_\_\_\_\_  
Bruce W. Baber